IN THE

Supreme Court of the United States

October Term, 1974

No. 74-738

BENJAMIN MALLAH,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

On March 12th, 1974, Benjamin Mallah filed a Petition in this Court seeking a writ of certiorari to review the judgment and opinion entered on September 23rd, 1974 by the United States Court of Appeals for the Second Circuit in a proceeding entitled *United States of America, Plaintiff-Appellee,* v. *Benjamin Mallah, Defendant Appellant,* docket No. 74-1327.

Pursuant to Rule 24(4) of the Rules of this Court, Petitioner respectfully submits this brief in reply to the brief of the United States in opposition.

ARGUMENT

Respondent correctly notes that:

> "Petitioner Mallah contends that the trial court improperly limited the scope of his cross-examination of Joseph Conforti, a co-conspirator who testified for the government." (Respondent's Br., p. 14)

This reply brief is submitted because, in answering Petitioner's claim, the Respondent submits a critically erroneous fact which demonstrates unfamiliarity with the record.

Respondent observes that:

> "On direct examination Conforti admitted participating in a scheme to extort money from Sam Kaplan by threatening to testify against him in the Sperling trial. (Respondent's Br., p. 14)

In an apparent effort to minimize the impact of this act, Respondent states in footnote nine that ". . . this threat was never carried out and Kaplan was acquitted." This assertion is both misleading and incorrect.

As noted in Petitioner's application for rehearing in the Court below, Kaplan was acquitted some three months before the extortive phone call.* It was clear, therefore, that Conforti was still plotting to "arrange" his testimony even after he had once testified to various aspects of the conspiracy.

From the limited cross-examination permitted, it is without doubt that the integrity of Conforti's testimony was inherently suspect. Limitation of cross-examination in this regard is repugnant to the concept of fair play and due process.

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* Kaplan was acquitted at the end of the Government's case in the Sperling trial in July of 1973. The phone call in issue occurred in October of 1973.

CONCLUSION

For the reasons stated herein and in the original Petition, a writ of certiorari should issue to review the judgment and opinion of the Second Circuit Court of Appeals.

Respectfully submitted,

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